

REMARKS/ARGUMENTS**Remarks:**

Claims 1-5, 7-17 and 20-27 are pending in this application. Claim 22 has been amended and applicant respectfully submits that no new matter has been introduced into the subject application. The amendment made to the claim 22 specifies that when the system promotes the artists who receive a predefined amount of direct financial contributions, “the financial contributions, minus a commission paid to the manager of the system, becomes available for use for the benefit of the artist.” This is supported in the specification throughout the specification, for example, at page 6, last paragraph, lines 6-11. Applicant respectfully requests entry of the amendment.

Arguments:

The following arguments are directed to the Office Action mailed July 8, 2004, rejecting claims 1-5, 7-17 and 20-27.

A. Claims 1, 2, 4, 7, 9, 10, 12, 13, 17, and 25-27 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Fujino et al. (U.S. Patent Application Pub. No. US2002/0077963). Claims 3, 5, 8 and 11 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Fujino et al. Further, claims 14-16 and 20-21 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Fujino et al. in view of Chacker (U.S. 6,578,008). Applicant respectfully disagrees with these grounds of rejection because Fujino et al. is not valid prior art.

Fujino et al. is not prior art to the present application because its appropriate 35 U.S.C. § 102(e) date is December 12, 2001, which is after the filing date of the present application, June 22, 2001. In applying the “Examination Guidelines for Applying References Under 35 U.S.C. 102(e)” in the Manual of Patent Examining Procedure at § 706.02(f)(1), the following steps are conducted:

(1) The Fujino et al. reference is a U.S. application publication, and therefore is a valid reference under 35 U.S.C. § 102(e);

(2) The Fujino et al. reference does not claim the benefit of an international application. Therefore, the 35 U.S.C. § 102(e) date is the earliest effective U.S. filing date, taking into consideration any proper benefit claims to prior U.S. applications under 35 U.S.C. §§ 119(e) or 120. No benefit of the filing date of the foreign application is given under 35 U.S.C. 102(e) for prior art purposes:

Example 3: Reference Publication and Patent of 35 U.S.C. 111(a) Application with 35 U.S.C. 119(a)-(d) Benefit Claim to a Prior Foreign Application.

For reference publications and patents of patent applications filed under 35 U.S.C. 111(a), the prior art dates, under 35 U.S.C. 102(e) accorded to these references are the earliest effective U.S. filing dates. No benefit of the filing date of the foreign application is given under 35 U.S.C. 102(e) for prior art purposes (*In re Hilmer*, 149 USPQ 480 (CCPA 1966)). Thus, a publication and patent of a 35 U.S.C. 111(a) application, which claims benefit under 35 U.S.C. 119(a)-(d) to a prior foreign-filed application (or under 35 U.S.C. 365(a) to an international application), would be accorded its U.S. filing date as its prior art date under 35 U.S.C. 102(e).

See Example 3 at MPEP § 706.02(f)(1), page 700-30.

Even if Fujino et al. was allowed to claim benefit to its Japanese application filing date, this is not allowed under 35 U.S.C. § 119(a) because the Fujino et al. U.S. application was filed more than twelve months after the Japanese application filing date. The Fujino application was filed in the United States on December 12, 2001 and in Japan on June 12, 2000 (see Attachment 1). 35 U.S.C. § 119(a) allows an application filed in a foreign country to be afforded the same privileges if “the application in this country is filed within twelve months from the earliest date on which such foreign application was filed.” Thus, the Fujino U.S. application cannot obtain benefit from its Japanese filing date under any circumstances.

Applicant respectfully requests withdrawal of these grounds of rejection.

B. Claims 22-23 were rejected under 35 U.S.C. § 102(e) as being unpatentable over Chacker (U.S. Patent No. 6,578,008). Applicant respectfully disagrees.

The Examiner alleges that Chacker reports the elements of claim 23 because its “interactive investment simulation game” is used to evaluate the demand of unsigned artists. Applicant has previously argued that an investment simulation game which uses “imaginary

money" (*see* Chacker, column 8, line 60) cannot anticipate the present methods, which use real money as the user contribution. In order to emphasize this difference, applicant has previously amended the claims to indicate that user contributions in the present methods are money.

Although the Examiner noted that "real money" is a feature upon which the applicant relies, the Examiner argued that limitations from the specification are not read into the claims. However, applicant contends that he is not reading limitations from the specification into the claims. All of the independent claims recite that user contributions or financial contributions are money. The applicant's use of the term "money" in the specification does not have a meaning that is contrary to the plain meaning of the term. Rather, it is Chacker that uses the term "money" in a special way, which is manifested by the fact Chacker's money is described as imaginary money. Applicant has been describing "money" in his invention as "real" money to indicate how Chacker's money is not the same.

In Chacker's system, users are contributing their time to the interactive investment simulation game and not to a money-fund for the benefit of an artist. In contrast, the users of the present invention are contributing real money to a fund that is for an artist, as reflected by the fact that when an artist attains a predefined money level of user contributions, the fund itself (minus a commission) is provided for the benefit of the artist. Claim 22 has been amended to include this element (claim 23 depends from claim 22 and thereby also includes this element). Chacker nowhere discloses or suggests such an element. Rather, in Chacker, users are motivated to contribute their time to a game such that "top traders for each month or quarter receive various prizes" or for the "enjoyment and fun of the game." (*see* Chacker, column 8, lines 64-65 and column 9, line 7). However, it is impossible that users in Chacker's game can contribute their time or their imaginary money to a fund, such that the fund itself can be provided for the benefit of an artist. To highlight this important difference, applicant has amended claim 22 to include the following phrase, "the financial contributions, minus a commission paid to the manager of the system, becomes available for use for the benefit of the artist."

The distinction between imaginary and real money creates fundamental differences between the two systems. In Chacker, the freedom of playing with imaginary money, coupled with the incentive to win prizes, can create "market-demand" data that is influenced/biased by traders who speculate which artists in the game are the most popular. In other words, in

Chacker's system, users can receive benefits based on savvy game-play alone, where the users are not necessarily making their virtual stock trades based on which artists they most enjoy. In the present invention, users contribute money to artists, not because these users can win prizes or because these users receive game-play enjoyment compensation, but because these users have the option to support the development of an artist that they enjoy. For fans who contribute to an artist that reaches a predefined level of financial (money) support, or becomes "BoomBacked™", then the fan is eligible for certain membership privileges associated with the BoomBacked artist. These privileges directly relate to the artist that the user chose to support, such as discounts on merchandise associated with the artist, advance notice of tour dates, discounts on merchandise associated with the artist, advanced notice of tour dates, discounts on concert tickets and music, etc (see Application as filed, page 10, 2nd paragraph). Therefore, the present invention can more accurately determine market demand because users are directly contributing real money, where the real money is the index of market demand. In Chacker, prizes are needed to provide incentives for its users to play the game, and as such, this creates a definite non-equivalence between an index of market demand that is based on imaginary money and an index of market demand that is based on real money.

In sum, Chacker does not disclose the element of a financial contribution that is money, because Chacker discloses the element of "imaginary money." Further, Chacker does not disclose that when the system promotes the artists who receive a predefined amount of direct financial contributions, "the financial contributions, minus a commission paid to the manager of the system, becomes available for use for the benefit of the artist." Thus, Chacker does not anticipate the present claims. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Applicant respectfully requests reconsideration and withdrawal of this ground of rejection.

CONCLUSION

For all the reasons advanced above, Applicant respectfully submits that the rejections have been overcome and should be withdrawn. Consequently, issuance of a Notice of Allowance is respectfully requested.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees that may be required for this Amendment, or credit any overpayment, to deposit account number 08-0219.

In the event that an extension of time is required the Commissioner is requested to grant a petition for that extension which is required to make this response timely, and is hereby authorized to charge any fee for such, to deposit account number 08-0219.

Respectfully submitted,



William W. Kim
Registration No. 53,127
Agent for Applicant

Dated: November 8, 2004

Wilmer, Cutler, Pickering
Hale and Dorr LLP
399 Park Ave.
New York, NY 10022
Direct Phone: (212) 937-7280
Phone: (212) 230-8800
Fax: (212) 230-8888



(19)

200135

(11) Publication number:

Generated Document.

PATENT ABSTRACTS OF JAPAN

(21) Application number: 2000176022

(51) Intl. Cl.: G06F 17/60

(22) Application date: 12.06.00

(30) Priority:

(43) Date of application 26.12.01
publication:

(84) Designated contracting states:

(71) Applicant: FUJINO JIMUSHO:KK

(72) Inventor: FUJINO KOTARO
SHOYAMA HIDEMITSU
KOSAKA SEIICHI

(74) Representative:

(54) ARTIST SUPPORT**MEDIATION SYSTEM**

(57) Abstract:

PROBLEM TO BE SOLVED: To provide an artist support mediation system providing environment wherein a viewer is given a chance to support activities of an unknown article that the viewer supports or likes by raising funds and an unmanned artist can do creating activities without any major sponsor while receiving support money until the artist becomes independent.

SOLUTION: A vote accepting means 39 accepts votes for previously registered or works, a charging process means 40 charges the

supporters' on the basis of a predetermined vote unit price according to the number of votes, and a totalization processing means 41 totalizes scores by the artists or works; and a support money allotment processing means 42 allots support money to the artists or artists who created the works on the basis of a predetermined rate according to the numbers of votes and an allotted money distribution processing means 43 allots allotments to the respective supporters under predetermined conditions according to the numbers of votes or the numbers of held votes.

COPYRIGHT: (C) 2001, JPO

